FILED
OCT 10 2006
OFFICE OF THE CLERK
SUPREME COURT, U.S.

(9)

No. 05-1240

In the Supreme Court of the United States

ANDRE WALLACE,

Petitioner,

v.

CHICAGO POLICE OFFICERS KRISTEN KATO AND EUGENE ROY,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF AMICUS CURIAE OF COOK COUNTY IN SUPPORT OF RESPONDENTS

RICHARD A. DEVINE
County of Cook
Cook County State's Attorney
Counsel of Record

PATRICK T. DRISCOLL, JR.
LOUIS R. HEGEMAN
JAMES E. FITZGERALD
PAUL CASTIGLIONE
VERONICA CALDERON MALAVIA
SUSAN R. SCHIERL SULLIVAN
309 Richard J. Daley Center
Chicago, Illinois 60602
(312) 603-5496

Midwest Law Printing Company/Photex — Chicago — (312) 431-0185

QUESTION PRESENTED

When does a claim for damages arising out of a false arrest or other search or seizure forbidden by the Fourth Amendment accrue when the fruits of the search were introduced in the claimant's criminal trial and he was convicted?

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INTEREST OF AMICUS

Amicus is the County of Cook, Illinois, the second largest county in the United States. The State's Attorney of Cook County is the chief legal officer for Cook County and is constitutionally and statutorily charged with representing the County in all civil litigation. *County of Cook ex rel. Rifkin v. Bear Stearns & Co.*, 215 Ill. 2d 466, 831 N.E.2d 563 (2005). Cook County is responsible for paying settlements and judgments in Section 1983 and common law tort actions against the Cook County Sheriff and his deputies. *Carver v. Sheriff of La Salle County*, 203 Ill. 2d 497, 787 N.E.2d 127 (2003). The outcome of the litigation before this Court will impact the civil liability of the Sheriff and his deputies who are sued for alleged wrongful seizures in violation of the Fourth Amendment. Hence, Cook County has an interest in the resolution of this litigation because it bears financial responsibility for paying settlements and judgments in Section 1983 actions against sheriffs and their deputies.

As the legal representative of a unit of state government, Supreme Court Rule 37 allows *Amicus* to file a supporting brief without permission of the parties. Therefore, Cook County, Illinois respectfully submits this brief as *Amicus Curiae* in support of Respondents in accordance with Supreme Court Rule 37.

STATEMENT OF THE CASE

Amicus adopts the Statement of the Case presented by Respondents Chicago Police Officers Kristen Kato and Eugene Roy.

SUMMARY OF ARGUMENT

The Fourth Amendment was designed by the Framers to protect privacy interests of "the people" in their "persons,

houses, papers, and effects" from unwarranted intrusions by the government. As such, it operates in both the civil and criminal context. However, the Framers enacted an elaborate system of constitutional protections to afford protection against governmental oppression as one "travels through" the continuum of the criminal prosecutorial process. Within this constitutional continuum stands the Fourth Amendment, designed to operate within the pre-trial phase of the proceedings, protecting against unlawful searches and seizures.

The systemic responsibility for the end result of a criminal prosecution is borne by the "trial Amendments"—the Fifth Amendment, the Sixth Amendment, and the Due Process Clause. It is these Amendments that were designed to operate together within the trial phase of a criminal proceeding to ensure a fair trial and, therefore, a just result. As such, any §1983 claims regarding the end result—the conviction and confinement—are properly addressed to these Amendments.

Because of the "implicit habeas exception" for §1983 damages claims set forth in *Heck v. Humphrey*, 512 U.S. 477 (1994), however, any claims that would "necessarily imply" the invalidity of a conviction or confinement are not cognizable unless the "favorable termination" requirement has first been satisfied. These claims, therefore, accrue only upon "favorable termination."

In contrast, the Fourth Amendment bears no constitutional systemic responsibility for the end result of a criminal prosecution. Its role is relegated to the pre-trial phase of the criminal justice system and the Fourth Amendment injury is complete upon the illegal search or seizure—the moment the privacy interest which the Fourth Amendment was designed to protect was offended. Moreover, the "fruit" of the Fourth Amendment violation is suppressed as a judicial sanction to deter the Fourth Amendment unconstitutional

behavior of police officers. The exclusionary rule of the Fourth Amendment is not itself a constitutional right, it is a judicial remedy. Therefore, the use of "fruit" at trial does not effect a new Fourth Amendment violation. The constitutional injury was complete at the time of the initial arbitrary invasion of protectible privacy interests. This remedy cannot be used to distort the Fourth Amendment by dragging it into the trial phase of the proceedings and, thereby, tying it into the validity of a conviction or confinement under *Heck* principals.

Thus, due to the organizational structure of the Constitution, a Fourth Amendment injury is "constitutionally disconnected" from the end result. The Fourth Amendment was designed to operate within the pre-trial sphere and its constitutional injury occurs at the time of the search and seizure. It is an injury to the person or property that is discrete from the conviction and confinement. Therefore, it accrues at the moment the Fourth Amendment interest is offended.

ARGUMENT

THE FOURTH AMENDMENT WAS INTENDED BY THE FRAMERS TO OPERATE WITHIN THE PRE-TRIAL PROCESS, AFFORDING PROTECTION AGAINST UNWARRANTED INTRUSIONS OF PRIVACY INTERESTS. AS SUCH IT IS "CONSTITUTIONALLY DISCONNECTED" FROM THE "TRIAL AMENDMENTS," WHICH WERE DESIGNED TO ENSURE A JUST RESULT. THUS, FOURTH AMENDMENT CLAIMS ACCRUE AT THE MOMENT OF THEIR COMMISSION IN THAT THEY DO NOT "NECESSARILY IMPLY" THE INVALIDITY OF A CONVICTION OR CONFINEMENT, INCLUDING THE INTRODUCTION OF THE "FRUIT" FOUND TO BE OBJECTIONABLE UNDER THE FOURTH AMENDMENT EXCLUSIONARY RULE.

Petitioner's case, as Justice Scalia lamented in *Apprendi v. New Jersey*, 530 U.S. 466, 499 (2000) (Scalia, J., concurring), "proceeds on the erroneous and all-too-common assumption that the Constitution means what we think it ought to mean. It does not; it means what it says." Time and time again, this Court has been called upon to correct these "all-too-common assumptions"—the seeds that, ultimately, drag their constitutional roots into areas far-afield from the Framers' original intendment. Simultaneously, this process operates as a systemic distortion of the Constitution itself—pressing Amendments into service where they were unintended to operate and, thereby, displacing others designed to do the assigned task. Under the guise of tort law, Petitioner draws upon this distorted process in order enlist the Fourth Amendment to compensate him for a host of alleged "constitutional injuries" which arise at discrete moments of the prosecutorial process. This Court has shown no hesitancy of late in restoring various Amendments to their natural order within the criminal prosecutorial system

envisioned by our Framers. *Amicus* asks this Court to now do so in the context of the Fourth Amendment.

Looming over this entire discussion is Title 42 U.S.C. § 1983, intended to "[create] a species of tort liability in favor of persons who are deprived of 'rights, privileges, or immunities secured' to them by the Constitution." *Carey v. Piphus*, 435 U.S. 247, 254 (1978). The common thread implicitly running throughout both Petitioner's "Fourth Amendment-based" argument (Pet. Br. at 17-23) and his alternative common law tort-based argument (Pet. Br. at 23-32) is that, applying "accepted and ordinary principles of causation," the causal chain, beginning with his arrest by Respondents, ought to encompass his conviction and confinement as "the natural consequences of respondent's actions." (Pet. Br. at 8, 17, 23, 28-29) What Petitioner's argument fails to countenance is that § 1983, "is not itself a source of substantive rights, but a method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that it describes." *Baker v. McCollan*, 443 U.S. 137, 144 (1979).

Thus, while §1983 most assuredly "confers a general remedy for injuries to personal rights" (*Wilson v. Garcia*, 471 U.S. 261, 278 (1985)) that "should be read against the background of tort liability" (*Monroe v. Pape*, 365 U.S. 167, 188 (1961)), it "only provides a remedy and does not itself create any substantive rights." *Wilson v. Garcia*, 471 U.S. 261, 278 (1985). "§1983 imposes liability for violations of rights protected by the Constitution, not for violations of duties of care arising out of tort law." *Baker*, 443 U.S. at 146. This statute should not now, through tort-based concepts of "Mrs. Palsgraf-type causation," be employed to distort the scope and purpose of the Fourth Amendment—the sole federal right upon which Petitioner predicates his claim.

Before turning to the merits of the argument, however, it is appropriate to identify with precision the operative

premises of the instant cause. Petitioner brought a federal claim for damages under §1983, seeking compensation for his state court conviction and confinement, which were ultimately overturned during the state direct appeal process. The state court found that, at some point during defendant's stay at the police station, his initial voluntary accompaniment ripened into a full blown arrest without the requisite probable cause. The confession Petitioner made, therefore, was suppressed as "fruit of the poisonous tree" pursuant to the Fourth Amendment exclusionary rule. The prosecution, thereafter, *nolled* the charges against Petitioner. Petitioner now seeks civil money damages from Respondents alone, the police officers who arrested Petitioner and obtained his confession.[1] He does so solely through the vehicle of the Fourth Amendment and its exclusionary rule. There is no issue in this case regarding an involuntary confession in violation of the Fifth Amendment.[2] The sole constitutional objection to Petitioner's confession is the "fruit relationship" it bore to his unlawful arrest.

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[1] Petitioner asserts no instances of "unconstitutional behavior" on the part of Respondents-officers outside of their pre-trial role in arresting and obtaining an oral confession from Petitioner at the station. Indeed, at trial, the testimony regarding Petitioner's confession was adduced through the Assistant State's Attorney who obtained a written confession from Petitioner after the oral confession in question.

[2] Petitioner concedes that "the voluntariness of the confession is not before the Court." (Pet. Br. at 11, n. 5) Nonetheless, throughout his brief he intimates that both his statement and Respondents' actions in obtaining it were unconstitutional on grounds other than the Fourth Amendment and its accompanying exclusionary remedy (See, *e.g*, Pet. Br. at 33 ("police officers exploited an unlawful arrest to secure a false confession")) in contravention of preclusion principles. See *Allen v. McCurry*, 449 U.S. 90 (1980).

The question before this Court, thus, asks: "When does a claim for damages arising out of a false arrest or other search or seizure forbidden by the Fourth Amendment accrue when the fruits of the search were introduced in the claimant's criminal trial and he was convicted?" The accrual date, obviously, is significant because of the "implicit habeas exception" to cognizable §1983 claims (*Wilkinson v. Dotson*, 544 U.S. 74, 82 (2004)), represented by *Heck v. Humphrey*, 512 U.S. 477 (1994) in this instance due to Petitioner's requested money damages. In order to effectuate "the hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments" (*Heck*, 512 U.S. at 485), *i.e.*, to prevent prisoners from end-running habeas proceedings, *Heck* required that "§1983 damages actions that *necessarily* require the plaintiff to prove the unlawfulness of his conviction or confinement" were not cognizable. *Heck*, 512 U.S. at 485, 486-487 (emphasis added).

More specifically, the "implicit habeas exception" effected by *Heck* and related cases seeks to prohibit litigants from "evad[ing the exhaustion] requirement [of habeas proceedings] by the simple expedient of putting a different label on their pleadings." *Preiser v. Rodriguez*, 411 U.S. 475 (1973). However, if "a judgment in favor of the plaintiff would [not] *necessarily* imply the invalidity of his conviction or sentence" then the §1983 action is not really a habeas proceeding masquerading as a civil tort action and, therefore, "the action should be allowed to proceed, in the absence of some other bar to the suit." *Heck*, 512 U.S. at 487 (footnotes omitted).[3] As will be demonstrated, when Petitioner's

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[3] Petitioner's concern about "the needless filing of innumerable false arrest claims" overcrowding federal dockets (Pet. Br. at 32-33) begs the question. §1983 is "an independent federal remedy"

(continued...)

claims are properly scrutinized, his compensable Fourth Amendment injuries, are not, legally-speaking, indirect challenges to his conviction or confinement.

Petitioner would like this Court to fold the entirety of the criminal process into the Fourth Amendment. However, "The Constitution is an organic scheme of government to be dealt with as an entirety. A particular provision cannot be dissevered from the rest of the Constitution." *Reid v. Covert*, 354 U.S. 1, 44 (1957) (Frankfurter, J., concurring). "The Constitution and the Amendments in the Bill of Rights [set forth] safeguards designed to protect defendants against oppressive governmental practices * * *." *United States ex rel. Toth v. Quarles*, 350 U.S. 11, 16 (1955). These "safeguards"—the component parts of the various constitutional amendments—combine synergistically to create our adversary system of criminal justice. The Constitution, as a whole, was designed by the Framers to *systemically* guard

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(...continued)
and "unless that remedy is structured to require previous resort to state proceedings, so that the claim may not even be maintained in federal court unless such resort be had [*e.g.*, habeas proceedings] it cannot be assumed that Congress wishes to hold open the independent federal remedy during any period of time necessary to pursue alternative state-court remedies." *Bd. of Regents of the Univ. of the State of New York v. Tomanio*, 446 U.S. 478, 490-491 (1980). Moreover, both habeas itself and the *Heck* "implicit habeas exception" principle designed to protect it already represent a balance of principles of comity and federalism. see *Williams v. Taylor*, 529 U.S. 420 (2000); *Wilkinson v. Dotson*, 544 U.S. 74, 84 (2005). In this regard, *Heck* itself recognized abstention as "an appropriate response to the parallel state-court proceedings" (*Heck*, 512 U.S. at 487, n. 8) and this Court, in *Hardin v. Straub*, 490 U.S. 536, 544 (1989) recognized that "many prisoners are willing and able to file §1983 suits while in custody." The Fourth Amendment cannot be distorted out of convenience to a federal court.

against governmental oppression—a system that operates most effectively when each provision operates within its own intended sphere, combining numerous and distinct Amendments for its efficacy.

However, as one "travels through" the criminal prosecutorial process, from arrest to conviction and confinement, distinct Amendments play different roles along the way—depending on the purpose for which our Framers designed them. Moreover, the "Thou shalt nots" (*Reid*, 354 U.S. at 9) of the various Amendments target various "actors" within the prosecutorial process with their intended constraint. As this Court recognized long ago, "The complicated process of criminal justice is [ ] divided into different parts, responsibility for which is separately vested in the various participants upon whom the criminal law relies for its vindication." *McNabb v. United States*, 318 U.S. 332, 343 (1943).

Indeed, §1983 common law-derived immunities principles recognize precisely this point. Determining that "the common law provided absolute immunity from subsequent damages liability for all persons * * * who were integral parts of the judicial process" (*Briscoe v. LaHue*, 460 U.S. 325, 335 (1983)), this Court essentially ordered the §1983 immunities of the various actors around their function within the system and that function's relationship to the judicial trial process. For instance, an officer testifying at trial (even if he offers perjured testimony) is afforded absolute immunity (*Briscoe v. LaHue*, 460 U.S. 325, 333 (1983)) along with a prosecutor " 'in initiating a prosecution and in presenting the State's case'." *Burns v. Reed*, 500 U.S. 478, 486 (1991) (citation omitted). In both instances, the conduct is " 'intimately associated with the judicial phase of the criminal process.'." *Burns*, 500 U.S. at 486 (citation omitted). As such, "the truthfinding process is better served" (*Briscoe*, 460 U.S. at 333-334) by considerations in favor of

the immunities because "the judicial process is largely self-correcting." *Mitchell v. Forsyth*, 472 U.S. 511, 522 (1985).

In contrast, an officer operating within his intended pre-trial Fourth Amendment sphere is only afforded qualified immunity. *Pierson v. Ray*, 386 U.S. 547, 557 (1967). Thus, for example, an officer is only qualifiedly immune for his role in obtaining an unconstitutional arrest warrant. *Malley v. Briggs*, 475 U.S. 335, 344 (1986). This Court, moreover, refused to extend similar immunities to the officer applying for a warrant as that afforded a prosecutor seeking an indictment because the officer's action, "while a vital part of the administration of criminal justice, is further removed from the judicial phase of criminal proceedings." *Malley*, 475 U.S. at 342-343. Similarly, a prosecutor is only qualifiedly immune for advising the police in the investigative phase of a criminal case because such action is not "intimately associated with the judicial phase of the criminal process." *Burns*, 500 U.S. at 493. This Court noted that "one of the most important checks, the judicial process, will not necessarily restrain out-of-court activities by a prosecutor that occur prior to the initiation of a prosecution." *Burns*, 500 U.S. at 496.

The §1983 immunities principles, ordered around the proximity to the judicial process of the particular actor and function, effectively parallel the constitutional ordering within the criminal justice system. Immunities are given greatest sway within the judicial process precisely because the Constitution itself contains a compendium of rights, operative during the judicial process, to ensure the accuracy of the truth-seeking process. It is the Amendments pressed into service during the trial phase of the criminal prosecution—the Fifth Amendment, the Sixth Amendment, the Due Process Clause (both procedural and substantive) and, combinations thereof (see *Apprendi v. New Jersey*, 530 U.S. 466 (2000) (jury trial right, in conjunction with due process

proof beyond a reasonable doubt requirement))—that are designed to ensure the accuracy of the final result. These rights operate within the trial sphere of a criminal prosecution and combine to fulfill their responsibility to ensure a fair trial.

The Fifth Amendment's Self Incrimination Clause, for example, applicable by its text when a "person" is "compelled in a criminal case to be a witness against himself," is not violated "absent use of the compelled statements in a criminal case against the witness" (*Chavez v. Martinez*, 538 U.S. 760, 769 (2003)), although an "essential predicate" is a pre-trial custodial interrogation (*Mayle v. Felix*, 545 U.S. 644, 125 S.Ct. 2562, 2573 (2005)). While *Miranda* warnings are required during pre-trial interrogation (*Miranda v. Arizona*, 384 U.S. 436 (1966)), "[t]he Court made it clear that the basis for decision was the need to protect the fairness of the trial itself." *Schneckloth v. Bustamonte*, 412 U.S. 218, 240 (1973).

The Sixth Amendment, moreover, affords to, according to its text, "the accused" "in all criminal prosecutions" a "compact statement of the rights necessary to a full defense" which "are basic to our adversary system of criminal justice." *Faretta v. California*, 422 U.S. 806 (1975); See, *e.g.*, *Crawford v. Washington*, 541 U.S. 36 (2004) ("the principal evil at which the Confrontation Clause was directed was the civil-law mode of criminal procedure and particularly its use of *ex parte* examinations as evidence against the accused"). While the Sixth Amendment right to counsel does reach back into the pre-trial process, it does so only upon initiation of "adversary judicial criminal proceedings"—"whether by way of formal charge, preliminary hearing, indictment, information, or arraignment." *Kirby v. Illinois*, 406 U.S. 682, 689 (1972); see *Sweat v. Arkansas*, 469 U.S. 1172, 1176 (1985). Nonetheless, "the 'trial' guarantees that have been applied to the 'pretrial' stage of the criminal

process are similarly designed to protect the fairness of the trial itself." *Schneckloth*, 412 U.S. at 238-239.

Finally, these trial Amendments are rounded out by the free-roving Due Process Clause, both procedural and substantive.[4] For example, it is this Clause that commands proof beyond a reasonable doubt for a constitutionally adequate conviction. See *In re Winship*, 397 U.S. 358 (1970); see also *Apprendi*, 530 U.S. 466.

Petitioner could premise his claim for damages upon these trial Amendments, if he so chose. It is these Amendments that were designed to guard against the injuries he alleges—an unconstitutional conviction or sentence. Moreover, had he brought his claims under the appropriate Amendments, he would have been timely in that "a §1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated" (*Heck*, 512 U.S. at 490) because of the *Heck* "implied habeas exception" discussed above. However, Petitioner obviously realizes he can achieve no economic recourse for his conviction and confinement by premising his claim upon any of these trial Amendments, due to §1983 immunities principles discussed above.

As such, he has attempted to fold his "unjust end result injuries" into the Fourth Amendment, a wholly distinct protection. Just because he runs up against principals of immunity, however, does not mean that another constitutional provision should be distorted to suit his needs. His claims cannot find a home in the Fourth Amendment

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[4] The Due Process Clause also operates outside of the trial phase of criminal proceedings, governing, for example, the actions of an officer in a high-speed automobile chase aimed at apprehending a suspected offender. see *County of Sacramento v. Lewis*, 523 U.S. 833 (1998).

because this provision was designed to afford protection against injuries distinct from the "unjust end result injuries" defendant is now trying to shoehorn into it. As will be seen, true Fourth Amendment injuries occur during the pre-trial process, at the time of the unconstitutional search, seizure, or pre-trial detention. Because of the Fourth Amendment's "constitutional unconnectedness" to the trial phase of a criminal prosecution, §1983 claims premised upon this species of constitutional injury accrue at the time of occurrence and are not subject to the *Heck* "implicit habeas exception."

The Fourth Amendment provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. CONST. Amend. IV.

It applies to "the people," in general and, unlike the Fifth and Sixth Amendments, is not even necessarily tied into the criminal prosecutorial process. The Fourth Amendment's "protection applies in the civil context as well." *Soldal v. Cook County*, 506 U.S. 56, 67 (1992). Its "guarantees are triggered by governmental searches and seizures 'without regard to the use to which [houses, papers, and effects] are applied'." *Soldal*, 506 U.S. at 67 n. 11 (citation omitted). It would be "anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior." *Camara v. Municipal Court of San Francisco*, 387 U.S. 523, 530 (1967); see *Weeks v. United States*, 232 U.S. 383, 392 (1914) (The Fourth Amendment's "protection reaches all alike, whether accused of crime or not").

Thus, for this reason alone, it is nonsensical, to say the least, to suggest that a §1983 plaintiff must wait until his conviction or confinement has been overturned for his Fourth Amendment claim to accrue. Under Petitioner's reasoning, this broad swath of "civil innocents"—clearly protected by the Fourth Amendment—cannot ever bring §1983 money damages claims against state officials who violate their Fourth Amendment rights. But see *Soldal*, 506 U.S. 56 (§1983 cause of action based upon unconstitutional seizure of mobile home in eviction proceedings). It is impossible to achieve a "favorable termination" of a conviction and/or confinement that never took place.

In the criminal prosecution context, "The Framers considered the matter of pretrial deprivations of liberty and drafted the Fourth Amendment to address it." *Albright v. Oliver*, 510 U.S. 266, 274 (1994). "The Fourth Amendment covers [] 'searches and seizures,'" and, therefore, under the "more-specific-provision rule" of *Graham v. Connor*, 490 U.S. 386 (1989) (*County of Sacramento v. Lewis*, 523 U.S. 833, 844 (1998)), Petitioner's complaint relating to his unlawful arrest and all other §1983 claims contesting "searches and seizures" must be brought under the Fourth Amendment.

That does not mean, however, that Petitioner's claims regarding his conviction and confinement can also be vindicated under this Amendment, as well. "The protections of the Fourth Amendment are of a wholly different order, and have nothing whatever to do with promoting the fair ascertainment of truth at a criminal trial." *Schneckloth*, 412 U.S. at 242. The Fourth Amendment "'is not an adjunct to the ascertainment of truth.' The guarantees of the Fourth Amendment stand 'as a protection of quite different constitutional values—values reflecting the concern of our society for the right to be let alone.'" *Schneckloth*, 412 U.S. at 242, quoting *Tehan v. United States ex rel. Schott*, 382 U.S. 406, 416 (1966). "There is a vast difference between those rights

that protect a fair criminal trial and the rights guaranteed under the Fourth Amendment." *Schneckloth*, 412 U.S. at 241; see *Haring v. Prosise*, 462 U.S. 306, 322 (1983) (petitioner allowed to pursue a §1983 Fourth Amendment claim despite a guilty plea because his "Fourth Amendment claim is irrelevant to the constitutionality of his criminal conviction"). The Fourth Amendment was designed to afford "protection from unfounded interference with liberty" in the pre-trial phase of a criminal prosecution. *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). As such, "the Fourth Amendment probable cause determination is in fact only the *first* stage of an elaborate system, unique in jurisprudence, designed to safeguard the rights of those accused of criminal conduct." *Gerstein*, 420 U.S. at 125, n. 27. "[T]he umbrella of the Fourth Amendment, broad and powerful as it is, casts its protection solely over the pretrial events of a prosecution." *Castellano v. Fragazo*, 352 F.3d 939, 959 (5th Cir. 2003).

In contrast with the trial Amendments, which serve to ensure a just end result, "the security of one's privacy against arbitrary intrusion by the police [] is at the core of the Fourth Amendment." *Wolf v. Colorado*, 338 U.S. 25, 27 (1949). "The purpose of the Fourth Amendment is to prevent unreasonable governmental intrusions into the privacy of one's person, house, papers, or effects. The wrong condemned is the unjustified governmental invasion of these areas of an individual's life. That wrong * * * is fully accomplished by the original search [or seizure] without probable cause." *United States v. Calandra*, 414 U.S. 338, 354 (1974). That is why the *Heck* Court properly acknowledged that " 'If there is a false arrest claim, damages for that claim cover the time of detention up until the issuance of process or arraignment, but not more.' W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts 888 (5th ed. 1984)." *Heck*, 512 U.S. at 484; see *Snodderly v. R.U.F.F. Drug Enforcement Task Force*, 239 F.3d 892, 899 (7th Cir. 2001) ("damages for false arrest are free-standing

and completely independent from any damages caused by a subsequent prosecution or conviction").

In short, the Fourth Amendment injury occurs prior to and is wholly unrelated to the trial process itself. It protects privacy-based interests and the constitutional ramifications for the aggrieved person are felt immediately and are, therefore, actionable immediately. To suggest that the accrual of these rights must await overturning a conviction or confinement due to the fact that these claims "necessarily imply" the invalidity of the conviction or confinement calls into question some well-established principles of law such as, for example, "[T]he established rule that illegal arrest or detention does not void a subsequent conviction." *Gerstein*, 420 U.S. at 119, citing *Frisbie v. Collins*, 342 U.S. 519 (1952). Moreover, "a conviction will not be vacated on the ground that the defendant was detained pending trial without a determination of probable cause." *Gerstein*, 420 U.S. at 866. If the Fourth Amendment violation is "constitutionally disconnected" to the conviction in these contexts, it must also be "disconnected" in the §1983 money damages context, as well.

Specifically with reference to §1983 damages actions "arising out of a false arrest or other search or seizure forbidden by the Fourth Amendment," to impose the *Heck* "favorable termination" requirement "would [ ] cut off potentially valid damages actions as to which a plaintiff might never obtain favorable termination—suits that could otherwise have gone forward had the plaintiff not been convicted." *Nelson v. Campbell*, 541 U.S. 637, 647 (2004). According to principles of §1983, a legitimately convicted person is just as entitled to redress his Fourth Amendment injuries as one who, ultimately, succeeds in overturning his conviction. To hold off accrual until "favorable termination" would, effectively, forever preclude the legitimately convicted person such redress.

This Court was "careful in *Heck* to stress the importance of the term 'necessarily'" (*Nelson*, 541 U.S. at 647) in fashioning its "implicit habeas exception." This Court reiterated that it "acknowledged that an inmate could bring a challenge to the lawfulness of a search pursuant to §1983 in the first instance, even if the search revealed evidence used to convict the inmate at trial, because success on the merits would not '*necessarily* imply that the plaintiff's conviction was unlawful.' [*Heck*,] 512 U.S., at 487, n. 7, 129 L.Ed.2d 383, 114 S.Ct. 2364 (noting doctrines such as inevitable discovery, independent source, and harmless error)." *Nelson*, 541 U.S. at 647. As such, the introduction of Petitioner's confession, constitutional in all regards save for its "fruit" relationship to the unlawful arrest, would not have *necessarily* implied the invalidity of his conviction or confinement had he brought it when it accrued. It is the existence of the exclusionary doctrines *vel non*, not their factually specific application in each case, that satisfies the "not necessarily" requirement for immediate accrual.

Nor should the introduction of the "fruits" of a Fourth Amendment violation (See, *e.g.*, *Wong Sun v. United States*, 371 U.S. 471, 486 (1963)) at trial be perceived to effect a new constitutional injury under the aegis of the Fourth Amendment. The Fourth Amendment exclusionary rule received an inauspicious start as a "rule of evidence for federal criminal trials." *McNabb v. United States*, 318 U.S. 332, 341 (1943). From there it has traveled a rather turbulent path, engendering much disagreement amongst members of the Court in terms of both its substance and its efficacy. "The debate within the court on the exclusionary rule has always been a warm one. It has been unaided, unhappily, by any convincing empirical evidence on the effects of the rule." *United States v. Janis*, 428 U.S. 433, 446 (1976) (footnote omitted).

As it evolved from its initial imposition upon the States through the Due Process Clause (*Mapp v. Ohio*, 367 U.S.

643, 648 (1961)), this Court has come to view the Fourth Amendment exclusionary rule as a "procedural weapon that has no bearing on guilt." *Linkletter v. Walker*, 381 U.S. 618, 628 (1965). Rather, it is a "judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the aggrieved." *United States v. Calandra*, 414 U.S. 338, 348 (1974). "As with any remedial device, the application of the rule has been restricted to those areas where its remedial objectives are thought most efficaciously served." *Calandra*, 414 U.S. at 348. This Court's "later cases have emphasized that the issue of exclusion is separate from whether the Fourth Amendment has been violated and exclusion is appropriate only if the remedial objectives of the rule are thought most efficaciously served." *Arizona v. Evans*, 514 U.S. 1, 13-14 (1995) (citations omitted).

Premised on this rationale, this Court has, essentially, cabined the operative field of the Fourth Amendment exclusionary rule within the trial/direct appeal process of a criminal prosecution. See, *e.g.*, *United States v. Janis*, 428 U.S. 433 (1976) (exclusionary rule not extended to preclude use of evidence seized by state officer in good faith, albeit unconstitutionally, in civil proceeding by or against the United States); *Pennsylvania Board of Probation and Parole v. Scott*, 524 U.S. 357 (1998) (exclusionary rule does not apply in parole revocation hearings). In fact, this Court has explicitly stated, ""We are asked to extend the operation of the exclusionary rule beyond the criminal trial context. We again decline to do so." *Pennsylvania Board of Probation and Parole*, 524 U.S. at 364.

Similarly, the exclusionary rule is riddled with exceptions within the trial/direct appeal process itself. See, *e.g.*, *United States v. Leon*, 468 U.S. 897 (1984) (modifies exclusionary rule to exempt evidence obtained by officers in good faith reliance upon a search warrant from its reach); *New York v.*

Harris, 495 U.S. 14, 17 (1990) (modifies exclusionary rule to exempt statements made outside home from the reach of a *Payton* violation within the home); *Silverthorne Lumber Co. v. United States*, 251 U.S. 385 (1920) (modifies exclusionary rule to exempt evidence obtained from a source independent of the Fourth Amendment violation); *Calandra*, 414 U.S. 338 (modifies exclusionary rule to exempt questions during grand jury based on illegally obtained evidence). Most recently, this Court jettisoned the exclusionary rule from Fourth Amendment knock and announce principles altogether because "resort to the massive remedy of suppressing evidence of guilt is unjustified." *Hudson v. Michigan*, 126 S. Ct. 2159, 2168 (2006).

"The Fourth Amendment contains no provision expressly precluding the use of evidence obtained in violation of its commands." *Arizona v. Evans*, 514 U.S. 1, 10 (1995). "Post-*Mapp* decisions have established that the rule is not a personal constitutional right. It is not calculated to redress the injury to the privacy of the victim of the search or seizure * * *." *Stone v. Powell*, 428 U.S. 465 (1976). Thus, "the use of fruits of a past unlawful search or seizure '[works] no new Fourth Amendment wrong.' The wrong condemned by the Amendment is 'fully accomplished' by the unlawful search or seizure itself and the exclusionary rule is neither intended nor able to 'cure the invasion of the defendant's rights which he has already suffered.'." *United States v. Leon*, 468 U.S. 897, 906 (1984) (citations omitted). "[T]he violation is complete by the time the evidence is presented to the court." *United States v. Janis*, 428 U.S. 433, 458 n. 35 (1976).

The Fourth Amendment wrong is complete at the time of the action forbidden by the Fourth Amendment itself, not when the "fruits" are introduced at trial. The introduction of the "fruit" of the violation effects no new constitutional injury. As such, it cannot extend the scope of the Fourth

Amendment violation, complete onto itself, into the trial phase of the prosecution. Its injury is complete upon its occurrence and the suppression of the "fruit" at trial is, in reality, a constitutional windfall for the defendant. §1983 does not create substantive rights; it only affords a federal remedy. A claim, therefore, premised on the Fourth Amendment must be judged by that Amendment's design and purpose. As established above, Fourth Amendment injuries are complete when the privacy interests of "the person" are infringed—not when the "fruits" are introduced at trial. There is no new Fourth Amendment injury and the action, therefore, accrues at the time of the illegal search or seizure. See also *Townes v. City of New York*, 176 F.3d 138, 146 (2nd Cir. 1999) ("[A]llowing * * * §1983 actions to proceed solely on a fruit of the poisonous tree theory of damages would vastly overdeter state actors" in contravention of the very principles upon which the Fourth Amendment exclusionary rule is based).

Additionally, because the Fourth Amendment was designed to operate in both the civil and criminal arenas, practical problems would result should this Court accept Petitioner's view of the Fourth Amendment injury. A civil litigant does not have the benefit of the Fourth Amendment exclusionary rule; although he suffered a Fourth Amendment violation just as his criminal counterpart did. Therefore, his Fourth Amendment injury would certainly accrue at the time of the illegal search or seizure. Due to its unavailability in the civil context, the Fourth Amendment "fruit" principal cannot drag the time of occurrence of the constitutional injury into the trial context for the civil litigant. It should not, therefore, be permitted to distort the Fourth Amendment injury in the criminal scenario, either. "The fruit of the poisonous tree doctrine is not available to elongate the chain of causation" for the discrete Fourth Amendment pre-trial injury. *Townes v. City of New York*, 176 F.3d 138, 146 (2nd Cir. 1999). "[D]amages for an unlaw-

ful search should not extend to post-indictment legal process, for the damages incurred in that process are too unrelated to the Fourth Amendment's privacy concerns." *Hector v. Watt*, 235 F.3d 154, 157 (3rd Cir. 2000).

Along similar lines, Petitioner's version of the Fourth Amendment would occasion logical problems with *Heck* itself. *Heck* sought to channel claims that were appropriately habeas claims, *i.e.*, claims for money damages that, in actuality, challenged the conviction or confinement, through the "procedural limitations of the federal habeas statute." *Nelson*, 541 U.S. at 647. Prisoners, however, are not even allowed to relitigate Fourth Amendment unlawful search or seizure claims in habeas proceedings. *Stone v. Powell*, 428 U.S. 465 (1976). Nonetheless, if Petitioner's claim that the Fourth Amendment injury is "constitutionally connected" to the conviction and confinement, a §1983 claimant-prisoner whose conviction was legitimate but, yet, had suffered a Fourth Amendment injury would be sent through the habeas process by virtue of *Heck*. However, on the habeas end, he would be prohibited from litigating his Fourth Amendment claim. Surely, *Heck* must not be interpreted in this fashion to effect such a futile, senseless result. For this reason, as well, the view that Petitioner's Fourth Amendment claim accrued at the time of the unlawful arrest—not after the conviction and confinement were overturned—is the only one that makes any sense in both the realm of the constitution and pragmatism.

In essence, Petitioner's request to treat conviction and confinement—the end results of the entire system—as uniquely Fourth Amendment injuries, effects a distortion of the purpose and scope of this Amendment. To interpret the Clause in the manner Petitioner advocates would drag it out of its natural role within the Constitutional scheme envisioned by the Framers. The Fourth Amendment was designed to operate within the pre-trial sphere, protecting privacy interests of "the

people." The Fourth Amendment injury, therefore, is complete and, thus, accrues, when that privacy is violated. The exclusionary remedy cannot act to convert the Fourth Amendment into a trial right and, therefore, artificially alter its accrual time.

CONCLUSION

For the reasons set forth above, this Court should affirm the judgment in *Wallace*, No. 05-1240.

Respectfully submitted,

RICHARD A. DEVINE
County of Cook
Cook County State's Attorney
Counsel of Record

PATRICK T. DRISCOLL, JR.
LOUIS R. HEGEMAN
JAMES E. FITZGERALD
PAUL CASTIGLIONE
VERONICA MALAVIA CALDERON
SUSAN R. SCHIERL SULLIVAN
309 Richard J. Daley Center
Chicago, Illinois 60602
(312) 603-5496